



May 10, 2004

**VIA ELECTRONIC SUBMISSION**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re:    *Notice of Ex Parte – In the Matter of the 1993, 1994, 1995 and 1996  
Annual Access Filings Regarding Add-Back and OPEB, CC Docket  
Nos. 93-193, 94-65 and 94-157***

Dear Ms. Dortch:

SBC Communications Inc. (“SBC”) submits the following *ex parte* in the above-referenced proceedings. SBC would like to reiterate that there is no basis for a finding of liability in either proceeding.

In the OPEB proceeding, SBC has demonstrated that LECs were not required to deduct OPEB liabilities from their rate bases and indeed could not do so without violating Section 65.800 of the Commission rules. SBC has shown that its 1996 PCI adjustments were not exogenous cost adjustments to reflect the accounting changes required by SFAS 106, but rather adjustments intended to correct errors in previous tariff filings – errors caused solely by the Common Carrier Bureau’s misinterpretation of the Commission’s ratemaking rules. SBC has shown that Section 65.600(d) in no way precluded the LECs from restating their interstate rates of return. Further, SBC has shown that as a policy and legal matter, it would be unjust and unreasonable for LECs to have no recourse where Commission staff misapplies Commission rules and the Commission takes four years to correct its staff’s error.<sup>1</sup>

Similarly, in the Add-back proceeding, SBC has shown that add-back was neither expressly mentioned nor contemplated in the Commission’s *1990 Price Cap Order* that implemented sharing. SBC has shown that language in that order could have lead LECs to reasonably conclude that their sharing obligations should be based on actual earnings. Further, SBC has shown that add-back *does* affect future earning and thus is inconsistent with paragraph 136 of the *1990 Price Cap Order*.<sup>2</sup>

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<sup>1</sup> See *Ex Parte* Letter from Gary Phillips to Marlene H. Dortch , FCC, CC Docket Nos. 93-193, 94-65 and 94-157 (March 31, 2004); *Ex Parte* Letter from David Cartwright to Marlene H. Dortch , FCC, CC Docket Nos. 93-193, 94-65 and 94-157 (Feb. 27, 2004).

<sup>2</sup> *Ex Parte* Letter from Gary Phillips to Marlene H. Dortch , FCC, CC Docket Nos. 93-193, 94-65 and 94-157 (March 15, 2004).

Nevertheless, should the Commission conclude otherwise and require SBC to issue refunds in either of the aforementioned proceedings, the Commission must factor any headroom within the price cap baskets into the refund calculations. Attached hereto is information reflecting the 1993-1996 price cap headroom figures for the following SBC telephone companies: Ameritech, Southwestern Bell L.P., Pacific Bell Telephone Company and Nevada Bell Telephone Company. As this data shows by telephone company, the rates charged in certain of these years were below the applicable price caps. The resulting headroom should be deducted from any refund amounts.

Pursuant to section 1.1206 of the Commission's Rules, this *ex parte* is being filed electronically with the Commission.

Sincerely,

**/s/ Michael D. Alarcon**

Attachments

cc: T. Preiss (*via electronic mail*)  
J. Atkinson (*via electronic mail*)  
A. Goldschmidt (*via electronic mail*)  
A. Mulitz (*via electronic mail*)

## RAO 20 Recission Order Sharing Impact Less Headroom

### 1992 Sharing Reflected in 1993 Annual Filing - **Ameritech**

	Line Description	Common Line	Traffic Sensitive	Specials	Interexchange	Total
Line 1	Below Cap \$ Headroom	N/A	\$ 10,746,977	\$ 1,649,067	\$ 11,714,771	\$ 24,110,815 *
Line 2	1992 Sharing Reflected in 1993 Annual Filing	\$ 2,099,336	\$ 1,614,409	\$ 620,046	\$ 136,209	\$ 4,470,000 ****
Line 3	Potential Sharing Refund, Less Headroom	\$ 2,099,336	0	0	0	\$ 2,099,336

### 1993 Sharing Reflected in 1994 Annual Filing - **Ameritech**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total
Line 1	Below Cap \$ Headroom	N/A	\$ 12,821,546	\$ 32,664,837	\$ 6,583,769	\$ 52,070,152 **
Line 2	1993 Sharing Reflected in 1994 Annual Filing	\$ 5,240,233	\$ 1,945,559	\$ 3,664,050	\$ 309,159	\$ 11,159,000 ****
Line 3	Potential Sharing Refund, Less Headroom	\$ 5,240,233	0	0	0	\$ 5,240,233

### 1994 Sharing Reflected in 1995 Annual Filing - **Ameritech**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total
Line 1	Below Cap \$ Headroom	N/A	\$ 9,419	\$ 28,496,688	\$ 48,349	\$ 28,554,456 ***
Line 2	1994 Sharing Reflected in 1995 Annual Filing	\$ 7,087,477	\$ 2,876,139	\$ 5,178,880	\$ 454,504	\$ 15,597,000 ****
Line 3	Potential Sharing Refund, Less Headroom	\$ 7,087,477	\$ 2,866,720	0	\$ 406,155	\$ 10,360,352

Total **Ameritech** Potential Refund Less Headroom \$ 17,699,921

\* Ameritech Trans #735

\*\* Ameritech Trans #791

\*\*\* Ameritech Trans #905

\*\*\*\* SBC Comments CC Docket No. 94-65 filed 4/08/03 Exhibit 13

# RAO 20 Recission Order Sharing Impact Less Headroom

1994 Sharing Reflected in 1995 Annual Filing - **Nevada Bell**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total
Line 1	Below Cap \$ Headroom	N/A	\$ 254,673	\$ 938,544	\$ 39	\$ 1,193,256 *
Line 2	1994 Sharing Reflected in 1995 Annual Filing	\$ 183,696	\$ 152,926	\$ 160,682	\$ 696	\$ 498,000 **
Line 3	Potential Sharing Refund, Less Headroom	\$ 183,696	0	0	\$ 656	\$ 184,353

\* Nevada Bell Trans #214

\*\* SBC Comments CC Docket No. 94-65 filed 4/08/03 Exhibit 8

## RAO 20 Recission Order Sharing Impact Less Headroom

### 1992 Sharing Reflected in 1993 Annual Filing - **Pacific Bell**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 13,924	\$ 362,352	\$ 630	\$ 376,906	*
Line 2	1992 Sharing Reflected in 1993 Annual Filing	\$ 3,900,320	\$ 1,360,231	\$ 1,881,677	\$ 772	\$ 7,143,000	****
Line 3	Potential Sharing Refund, Less Headroom	\$ 3,900,320	\$ 1,346,307	\$ 1,519,325	\$ 142	\$ 6,766,094	

### 1993 Sharing Reflected in 1994 Annual Filing - **Pacific Bell**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 23,359	\$ 2,325,331	\$ (101,143)	\$ 2,247,547	**
Line 2	1993 Sharing Reflected in 1994 Annual Filing	\$ 4,505,135	\$ 1,529,534	\$ 2,266,678	\$ 652	\$ 8,302,000	****
Line 3	Potential Sharing Refund, Less Headroom	\$ 4,505,135	\$ 1,506,175	0	\$ 101,795	\$ 6,113,106	

### 1995 Sharing Reflected in 1996 Annual Filing - **Pacific Bell**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 344	\$ 171,750	\$ (98,569)	\$ 73,525	***
Line 2	1995 Sharing Reflected in 1996 Annual Filing	\$ 2,350,036	\$ 837,846	\$ 1,251,741	\$ 377	\$ 4,440,000	****
Line 3	Potential Sharing Refund, Less Headroom	\$ 2,350,036	\$ 837,502	\$ 1,079,991	\$ 98,946	\$ 4,366,475	

Total **Pacific Bell** Potential Refund Less Headroom \$ 17,245,674

\* Pacific Bell Trans #1701

\*\* Pacific Bell Trans #1826

\*\*\* Pacific Bell Trans #1875

\*\*\*\* SBC Comments CC Docket No. 94-65 filed 4/08/03 Exhibit 2

## RAO 20 Recission Order Sharing Impact Less Headroom

### 1993 Sharing Reflected in 1994 Annual Filing - **SWBT**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 12,782	\$ 7,508,999	\$ 5,890	\$ 7,527,671	*
Line 2	1993 Sharing Reflected in 1994 Annual Filing	\$ 1,687,098	\$ 587,484	\$ 1,276,057	\$ 61,361	\$ 3,612,000	****
Line 3	Potential Sharing Refund, Less Headroom	\$ 1,687,098	\$ 574,702	0	\$ 55,471	\$ 2,317,271	

### 1994 Sharing Reflected in 1995 Annual Filing - **SWBT**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 26,212	\$ 6,160	\$ 1,124	\$ 33,495	**
Line 2	1994 Sharing Reflected in 1995 Annual Filing	\$ 5,645,168	\$ 1,901,934	\$ 4,071,867	\$ 223,031	\$ 11,842,000	****
Line 3	Potential Sharing Refund, Less Headroom	\$ 5,645,168	\$ 1,875,722	\$ 4,065,707	\$ 221,907	\$ 11,808,505	

### 1995 Sharing Reflected in 1996 Annual Filing - **SWBT**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 546,248	\$ 10,075,367	\$ 264,693	\$ 10,886,307	***
Line 2	1995 Sharing Reflected in 1996 Annual Filing	\$ 4,297,650	\$ 1,494,123	\$ 3,275,643	\$ 155,584	\$ 9,223,000	****
Line 3	Potential Sharing Refund, Less Headroom	\$ 4,297,650	\$ 947,875	0	0	\$ 5,245,525	

Total **SWBT** Potential Refund Less Headroom \$ 19,371,301

\* Southwestern Bell Trans #2359

\*\* Southwestern Bell Trans #2458

\*\*\* Southwestern Bell Trans #2544

\*\*\*\* SBC Comments CC Docket No. 94-65 filed 4/08/03 Figures 2F-2 and 2F-3

### ADD-BACK Sharing Impact Less Headroom

1992 ADD-BACK Sharing Reflected in 1993 Annual Filing - **Ameritech**

	Line Description	Common Line	Traffic Sensitive	Specials	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 10,746,977	\$ 1,649,067	\$ 11,714,771	\$ 24,110,815	*
Line 2	1992 ADD-BACK (1993 Sharing)	\$ 2,375,960	\$ 1,827,135	\$ 701,747	\$ 154,157	\$ 5,059,000	***
Line 3	Potential ADD-BACK Refund	\$ 2,375,960	0	0	0	\$ 2,375,960	

1993 ADD-BACK Sharing Reflected in 1994 Annual filing - **Ameritech**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 12,821,546	\$ 32,664,837	\$ 6,583,769	\$ 52,070,152	**
Line 2	1993 ADD-BACK (1994 Sharing)	\$ 4,491,225	\$ 1,667,473	\$ 3,140,333	\$ 264,969	\$ 9,564,000	***
Line 3	Potential ADD-BACK Refund	\$ 4,491,225	0	0	0	\$ 4,491,225	

Total **Ameritech** Potential Add-Back Refund Less Headroom \$ 6,867,186

\* Ameritech Trans #735

\*\* Ameritech Trans #791

\*\*\*SBC Reply Comments CC Docket No. 93-193 filed 5/19/03, Attachment One

## ADD-BACK Sharing Impact Less Headroom

### 1992 ADD-BACK Sharing Reflected in 1993 Annual Filing - **Nevada Bell**

	Line Description	Common Line	Traffic Sensitive	Specials	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	0	0	0	\$ -	*
Line 2	1992 ADD-BACK (1993 Sharing)	\$ 32,480	\$ 41,232	\$ 9,145	\$ 142	\$ 83,000	***
Line 3	Potential ADD-BACK Refund	\$ 32,480	\$ 41,232	\$ 9,145	\$ 142	\$ 83,000	

### 1993 ADD-BACK Sharing Reflected in 1994 Annual Filing - **Nevada Bell**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 3,280	\$ 973,628	\$ 2	\$ 976,910	**
Line 2	1993 ADD-BACK (1994 Sharing)	\$ 499,910	\$ 457,765	\$ 412,072	\$ 2,254	\$ 1,372,000	***
Line 3	Potential ADD-BACK Refund	\$ 499,910	\$ 454,485	0	\$ 2,252	\$ 956,646	

Total **Nevada Bell** Potential Add-Back Refund Less Headroom \$ 1,039,646

\* Nevada Bell Trans #168

\*\* Nevada Bell Trans #199

\*\*\*SBC Reply Comments CC Docket No. 93-193 filed 5/19/03, Attachment One



## ADD-BACK Sharing Impact Less Headroom

1993 ADD-BACK Sharing Reflected in 1994 Annual Filing - **Pacific Bell**

	Line Description	Common Line	Traffic Sensitive	Trunking	Interexchange	Total	
Line 1	Below Cap \$ Headroom	N/A	\$ 13,924	\$ 362,352	\$ 630	\$ 376,906	*
Line 2	1993 ADD-BACK (1994 Sharing)	\$ 558,593	\$ 194,808	\$ 269,488	\$ 111	\$ 1,023,000	**
Line 3	Potential ADD-BACK Refund	\$ 558,593	\$ 180,885	0	0	\$ 739,477	

\* Pacific Bell Trans #1701

\*\*\*SBC Reply Comments CC Docket No. 93-193 filed 5/19/03, Attachment One